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LRB094 19270 LJB 55378 a

1 AMENDMENT TO HOUSE BILL 5337

2 AMENDMENT NO. _____. Amend House Bill 5337 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Viatical and Life Settlements Act of 2006.

6 Section 5. Definitions.

7 "Advertising" means any written, electronic, or printed
8 communication or any communication by means of recorded
9 telephone messages or transmitted on radio, television, the
10 Internet, or similar communications media, including film
11 strips, motion pictures, and videos published, disseminated,
12 circulated, or placed directly before the public in this State,
13 for the purpose of creating an interest in or inducing a person
14 to sell, assign, devise, bequest, or transfer the death benefit
15 or ownership of a policy pursuant to a viatical settlement
16 contract.

17 "Business of viatical settlements" means any activity
18 involved in the offering, solicitation, negotiation,
19 procurement, effectuation, purchasing, investing, financing,
20 monitoring, tracking, underwriting, selling, transferring,
21 assigning, pledging, or hypothecating of viatical settlement
22 contracts or any other action affecting viatical settlement
23 contracts.

24 "Chronically ill" means:

1 (1) having a level of disability as determined by the
2 Secretary of Health and Human Services or being unable to
3 perform at least 2 activities of daily living, such as
4 eating, toileting, transferring, bathing, dressing, or
5 continence; or

6 (2) requiring substantial supervision to protect the
7 individual from threats to health and safety due to severe
8 cognitive impairment.

9 "Department" means the Department of Financial and
10 Professional Regulation.

11 "Financing entity" means an underwriter, placement agent,
12 lender, purchaser of securities, purchaser of a policy or
13 certificate from a viatical settlement provider, credit
14 enhancer, or an entity that has a direct ownership in a policy
15 that is the subject of a viatical settlement contract and:

16 (1) whose principal activity related to the
17 transaction is providing funds to effect the viatical
18 settlement or purchase of one or more viaticated policies;
19 and

20 (2) who has an agreement in writing with one or more
21 licensed viatical settlement providers to finance the
22 acquisition of viatical settlement contracts or to provide
23 stop loss insurance.

24 "Financing entity" does not include a nonaccredited investor.

25 "Fraudulent viatical settlement act" includes:

26 (1) Acts or omissions committed by a person who,
27 knowingly or with intent to defraud for the purpose of
28 depriving another of property or for pecuniary gain,
29 commits or permits its employees or its agents to engage in
30 acts including:

31 (A) presenting, causing to be presented, or
32 preparing with knowledge or belief that it will be
33 presented to or by a viatical settlement provider,
34 financing entity, insurer, insurance producer, or

1 another person, false material information or
2 concealing material information as part of, in support
3 of, or concerning a fact material to one or more of the
4 following:

5 (i) an application for the issuance of a
6 viatical settlement contract or policy;

7 (ii) the underwriting of a viatical settlement
8 contract or policy;

9 (iii) a claim for payment or benefit pursuant
10 to a viatical settlement contract or policy;

11 (iv) premiums paid on a policy;

12 (v) payments and changes in ownership or
13 beneficiary made in accordance with the terms of a
14 viatical settlement contract or policy;

15 (vi) the reinstatement or conversion of a
16 policy;

17 (vii) in the solicitation, offer,
18 effectuation, or sale of a viatical settlement
19 contract or policy;

20 (viii) the issuance of written evidence of a
21 viatical settlement contract or policy; or

22 (ix) a financing transaction;

23 (B) employing any device, scheme, or artifice to
24 defraud related to viaticated policies.

25 (2) In the furtherance of a fraud or to prevent the
26 detection of a fraud a person commits or permits its
27 employees or its agents to:

28 (A) remove, conceal, alter, destroy, or sequester
29 from the Secretary the assets or records of a licensee
30 or other person engaged in the business of viatical
31 settlements;

32 (B) misrepresent or conceal the financial
33 condition of a licensee, financing entity, insurer, or
34 other person;

1 (C) transact the business of viatical settlements
2 in violation of laws requiring a license, certificate
3 of authority, or other legal authority for the
4 transaction of the business of viatical settlements;
5 or

6 (D) file with the Secretary or the chief insurance
7 regulatory official of another jurisdiction a document
8 containing false information or otherwise conceals
9 information about a material fact from the Secretary.

10 (3) Embezzlement, theft, misappropriation, or
11 conversion of monies, funds, premiums, credits, or other
12 property of a life insurance producer acting as a viatical
13 settlement broker or another person engaged in the business
14 of viatical settlements or insurance.

15 (4) Recklessly entering into, negotiating, or
16 otherwise dealing in a viatical settlement contract, the
17 subject of which is a policy that was obtained by
18 presenting false information concerning a fact material to
19 the policy, or by concealing, for the purpose of misleading
20 another, information concerning a fact material to the
21 policy, where the viator or the viator's agent intended to
22 defraud the insurance company that issued the policy.
23 "Recklessly" means engaging in the conduct in conscious and
24 clearly unjustifiable disregard of a substantial
25 likelihood of the existence of the relevant facts or risks,
26 this disregard involving a gross deviation from acceptable
27 standards of conduct.

28 (5) Facilitating the change of state of residency of a
29 policy or a viator to avoid the provisions of this Act.

30 (6) Attempting to commit, assist, aid, or abet in the
31 commission of or conspiracy to commit the acts or omissions
32 specified in this definition.

33 "Licensee" means any viatical settlement provider or any
34 life insurance producer acting as a viatical settlement broker.

1 "Life insurance producer" means a person licensed as a
2 resident or nonresident insurance producer pursuant to Article
3 XXXI of the Illinois Insurance Code with a life line of
4 authority pursuant to Section 500-35 of the Illinois Insurance
5 Code.

6 "Person" means any natural or artificial entity including,
7 but not limited to, individuals, partnerships, limited
8 liability company, associations, trusts, or corporations.

9 "Policy" means an individual or group policy, group
10 certificate, contract, or arrangement of life insurance
11 affecting the rights of a resident of this State or bearing a
12 reasonable relation to this State, regardless of whether
13 delivered or issued for delivery in this State.

14 "Related provider trust" means a titling trust or other
15 trust established by a licensed viatical settlement provider or
16 a financing entity for the sole purpose of holding the
17 ownership or beneficial interest in purchased policies in
18 connection with a financing transaction. The trust shall have a
19 written agreement with the licensed viatical settlement
20 provider under which the licensed viatical settlement provider
21 is responsible for ensuring compliance with all statutory and
22 regulatory requirements and under which the trust agrees to
23 make all records and files related to viatical settlement
24 transactions available to the Secretary as if those records and
25 files were maintained directly by the licensed viatical
26 settlement provider.

27 "Secretary" means the Secretary of Financial and
28 Professional Regulation.

29 "Special purpose entity" means a corporation, partnership,
30 trust, limited liability company, or other similar entity
31 formed only to provide, directly or indirectly, access to
32 institutional capital markets for a financing entity or
33 licensed viatical settlement provider.

34 "Terminally ill" means having an illness or sickness that

1 reasonably is expected to result in death in 24 months or less.

2 "Viatical settlement broker" means a person who, on behalf
3 of a viator and for a fee, commission, or other valuable
4 consideration, offers or attempts to negotiate viatical
5 settlement contracts between a viator and one or more viatical
6 settlement providers. Irrespective of the manner in which the
7 viatical settlement broker is compensated, a viatical
8 settlement broker is deemed to represent only the viator and
9 not the insurer or viatical settlement provider and owes a duty
10 to the viator to act according to the viator's instructions and
11 in the best interests of the viator.

12 "Viatical settlement contract" means a written agreement
13 between a viator and a viatical settlement provider
14 establishing the terms under which the viatical settlement
15 provider will pay compensation or anything of value is paid,
16 which compensation or value is less than the expected death
17 benefit of the policy, in return for the viator's assignment,
18 transfer, sale, devise, or bequest of the death benefit or
19 ownership of any portion of the policy. "Viatical settlement
20 contract" includes a contract for a loan or other financing
21 transaction with a viator secured primarily by an individual or
22 group life insurance policy, other than a loan by a life
23 insurance company pursuant to the terms of the policy, or a
24 loan secured by the cash value of a policy. "Viatical
25 settlement contract" includes an agreement with a viator to
26 transfer ownership or change the beneficiary designation at a
27 later date regardless of the date that compensation is paid to
28 the viator. "Viatical settlement contract" does not mean a
29 written agreement entered into between a viator and a person
30 having an insurable interest in the insured's life.

31 "Viatical settlement provider" means a person, other than a
32 viator, who enters into or effectuates a viatical settlement
33 contract. "Viatical settlement provider" does not include:

34 (1) a bank, savings and loan association, credit union,

1 or other licensed lending institution that takes an
2 assignment of a policy as collateral for a loan;

3 (2) the issuer of a policy providing accelerated
4 benefits under the policy;

5 (3) an authorized or eligible insurer that provides
6 stop loss coverage to a viatical settlement provider,
7 financing entity, special purpose entity, or related
8 provider trust;

9 (4) a natural person who enters into or effectuates no
10 more than one agreement in a calendar year for the transfer
11 of policies for any value less than the expected death
12 benefit;

13 (5) a financing entity;

14 (6) a special purpose entity;

15 (7) a related provider trust; or

16 (8) an accredited investor or qualified institutional
17 buyer as defined, respectively, in Regulation D, Rule 501
18 or Rule 144A of the Federal Securities Act of 1933, as
19 amended, and who purchases a purchased policy from a
20 viatical settlement provider.

21 "Viaticated policy" means a life insurance policy that has
22 been acquired by a viatical settlement provider pursuant to a
23 viatical settlement contract.

24 "Viator" means the owner of a life insurance policy or a
25 life insurance certificate holder who is a resident of this
26 State, who enters or seeks to enter into a viatical settlement
27 contract. For the purposes of this Act, a viator is not limited
28 to an owner of a policy insuring the life of an individual with
29 a terminal or chronic illness or condition except where
30 specifically addressed. If there is more than one owner on a
31 single policy and the owners are residents of different states,
32 the transaction shall be governed by the law of the state in
33 which the owner having the largest percentage ownership resides
34 or, if the owners hold equal ownership, the state of residence

1 of one owner agreed upon in writing by all owners. Viator does
2 not include:

3 (1) a licensee under this Act, including a life
4 insurance producer acting as a viatical settlement broker;

5 (2) an accredited investor or qualified institutional
6 buyer as defined, respectively, in Regulation D, Rule 501
7 or Rule 144A of the Federal Securities Act of 1933, as
8 amended;

9 (3) a financing entity;

10 (4) a special purpose entity; or

11 (5) a related provider trust.

12 Section 10. License Requirements.

13 (a) A person shall not operate as a viatical settlement
14 broker unless the person is a life insurance producer and
15 satisfies the requirements of subsection (b) of this Section.

16 (b) A life insurance producer, as defined in this Act, who
17 has been licensed for at least one year, shall be permitted to
18 act as a viatical settlement broker and negotiate viatical
19 settlement contracts between a viator and one or more viatical
20 settlement providers. For purposes of this Section, the one
21 year requirement is deemed to be satisfied if the person has
22 been licensed as a resident life insurance producer in his or
23 her home state for at least one year. Not later than 30 days
24 from the first day of negotiating a viatical settlement
25 contract on behalf of a viator, the life insurance producer
26 shall notify the Secretary of the activity on a form prescribed
27 by the Secretary, and shall pay any applicable fees as
28 determined by the Secretary. Notification must include an
29 acknowledgment by the producer that he or she will operate in
30 accordance with this Act.

31 Irrespective of the manner in which the viatical settlement
32 broker is compensated, a viatical settlement broker is deemed
33 to represent only the viator and not the insurer or viatical

1 settlement provider and owes a duty to the viator to act
2 according to the viator's instructions and in the best
3 interests of the viator. The insurer that issued the policy
4 being viaticated shall not be responsible for any act or
5 omission of a viatical settlement broker or viatical settlement
6 provider arising out of or in connection with the viatical
7 settlement transaction, unless the insurer receives
8 compensation from the viatical settlement provider or viatical
9 settlement broker for the viatical settlement contract.

10 (c) Notwithstanding any other provision of this Section, a
11 person licensed as an attorney, certified public accountant, or
12 financial planner accredited by a nationally recognized
13 accreditation agency who is retained to represent the viator
14 and whose compensation is not paid directly or indirectly by
15 the viatical settlement provider may negotiate viatical
16 settlement contracts without having to obtain a license as a
17 life insurance producer.

18 (d) A person shall not operate as a viatical settlement
19 provider from within this State or for persons residing in this
20 State without first having obtained a viatical settlement
21 provider license from the Secretary.

22 (e) Application for a viatical settlement provider license
23 shall be made to the Secretary by the applicant on a form
24 prescribed by the Secretary. The application shall be
25 accompanied by a fee of \$1,500, which shall be deposited into
26 the Insurance Producer Administration Fund.

27 Viatical settlement providers' licenses may be renewed
28 from year to year on the anniversary date of the license upon
29 (i) submission of renewal forms prescribed by the Secretary and
30 (ii) payment of the annual renewal fee of \$750, which shall be
31 deposited into the Insurance Producer Administration Fund.
32 Failure to pay the fee within the terms prescribed by the
33 Secretary shall result in the expiration of the license.

34 (f) Applicants for a viatical settlement provider's

1 license shall provide information prescribed by the Secretary
2 on forms prescribed by the Secretary. The Secretary shall have
3 authority, at any time, to require the applicant to fully
4 disclose the identity of all stockholders, partners, officers,
5 members, and employees, except stockholders owning fewer than
6 5% of the shares of an applicant whose shares are publicly
7 traded. The Secretary may, in the exercise of discretion,
8 refuse to issue a license in the name of a legal entity, if not
9 satisfied that an officer, employee, stockholder, member, or
10 partner thereof who may materially influence the applicant's
11 conduct meets the standards of this Act.

12 (g) A viatical settlement provider's license issued to a
13 legal entity authorizes all partners, members, officers, and
14 designated employees to act as viatical settlement providers,
15 as applicable, under the license. All those persons must be
16 named in the application and any supplements thereto.

17 (h) Upon the filing of an application for a viatical
18 settlement provider's license and the payment of the license
19 fee, the Secretary may request information from the applicant
20 relating to the applicant's qualifications to be licensed as a
21 viatical settlement provider and shall issue a license if the
22 Secretary finds that the applicant:

23 (1) has provided a detailed plan of operation;

24 (2) is competent and trustworthy and intends to act in
25 good faith in the capacity authorized by the license
26 applied for;

27 (3) has a good business reputation and has had
28 experience, training, or education so as to be qualified in
29 the business for which the license is applied for;

30 (4) provides a certificate of good standing from the
31 state of its domicile if the applicant is a legal entity;
32 and

33 (5) has provided an anti-fraud plan that meets the
34 requirements of this Act.

1 The Secretary may not issue a license to a nonresident
2 applicant unless a written designation of an agent for service
3 of process is filed and maintained with the Secretary or the
4 applicant has filed with the Secretary the applicant's written
5 irrevocable consent that any action against the applicant may
6 be commenced against the applicant by service of process on the
7 Secretary.

8 A viatical settlement provider shall provide to the
9 Secretary new or revised information about officers, 10% or
10 more stockholders, partners, directors, members, or designated
11 employees within 30 days of a change.

12 Section 15. License suspension, denial, nonrenewal, and
13 revocation.

14 (a) The Secretary may refuse to issue or renew or may
15 suspend or revoke the license of any viatical settlement
16 provider if the Secretary finds any of the following:

17 (1) there was material misrepresentation in the
18 application for the license;

19 (2) the licensee or any officer, partner, member, or
20 key management personnel has been convicted of fraudulent
21 or dishonest practices, is subject to a final
22 administrative action, or is otherwise shown to be
23 untrustworthy or incompetent;

24 (3) the licensee demonstrates a pattern of
25 unreasonable payments to viators;

26 (4) the licensee or any officer, partner, member, or
27 key management personnel has been found guilty of, or
28 pleaded guilty or nolo contendere to, any felony or
29 misdemeanor involving fraud or moral turpitude, regardless
30 of whether a judgment or conviction has been entered by the
31 court;

32 (5) the licensee has entered into any viatical
33 settlement contract that has not been approved pursuant to

1 this Act;

2 (6) the licensee has failed to honor contractual
3 obligations set out in a viatical settlement contract;

4 (7) the licensee no longer meets the requirements for
5 initial licensure;

6 (8) the licensee has assigned, transferred, or pledged
7 a purchased policy to a person other than a viatical
8 settlement provider licensed in this State, an accredited
9 investor or qualified institutional buyer as defined,
10 respectively, in Regulation D, Rule 501 or Rule 144A of the
11 Federal Securities Act of 1933, as amended, a financing
12 entity, a special purpose entity, or a related provider
13 trust; or

14 (9) the licensee or any officer, partner, member, or
15 key management personnel has violated any of the provision
16 of this Act.

17 (b) The Secretary may suspend, revoke, or refuse to renew
18 the license of a life insurance producer acting as a viatical
19 settlement broker if the Secretary finds that the life
20 insurance producer acting as a viatical settlement broker has
21 violated the provisions of this Act.

22 (c) Before the Secretary denies a license application or
23 suspends, revokes, or refuses to renew the license of a
24 viatical settlement provider or a life insurance producer
25 acting as a viatical settlement broker the Secretary shall
26 conduct a hearing in accordance with the Illinois
27 Administrative Procedure Act.

28 Section 20. Approval of viatical settlement contracts. No
29 viatical settlement provider or viatical settlement broker may
30 use a viatical settlement contract or provide to a viator a
31 disclosure statement form in this State unless it has been
32 filed with and approved by the Secretary. A viatical settlement
33 contract form filed with the Secretary shall be deemed approved

1 if it has not been disapproved within 60 days of the filing.
2 The Secretary shall disapprove a viatical settlement contract
3 form or a disclosure statement form if, in the Secretary's
4 opinion, the contract or provisions contained therein are
5 unreasonable, contrary to the interests of the public, or
6 otherwise misleading or unfair to the viator. At the
7 Secretary's discretion, the Secretary may require the viatical
8 settlement provider or viatical settlement broker to submit
9 copies of its advertising material.

10 Section 25. Reporting requirements.

11 (a) Each viatical settlement provider shall file with the
12 Secretary on or before March 1 of each year an annual statement
13 containing information that the Secretary may prescribe by
14 rule. This information shall not include individual
15 transaction data regarding the business of viatical
16 settlements or data that compromises the privacy of personal,
17 financial, and health information of the viator or insured.

18 (b) Any information relating to the identity of an insured
19 individual or an insured individual's financial or medical
20 information collected, received, or maintained by any entity
21 directly or indirectly involved with a viatical settlement
22 transaction, including a viatical settlement provider, life
23 insurance producer acting as a viatical settlement broker,
24 information bureau, rating agency or company, or any other
25 person with actual knowledge of a viator's or insured's
26 identity, shall be subject to the requirements of Article XL of
27 the Illinois Insurance Code, except as provided below or
28 otherwise allowed or required by law. The information may not
29 be disclosed unless the disclosure is:

30 (1) necessary to effect a viatical settlement contract
31 between the viator and a viatical settlement provider and
32 the viator or insured or both, as may be required, have
33 provided prior written consent to the disclosure;

1 (2) provided in response to an investigation or
2 examination by the Secretary or another governmental
3 officer or agency;

4 (3) a term of or condition to the transfer of a policy
5 by one viatical settlement provider to another viatical
6 settlement provider;

7 (4) necessary to permit a financing entity, related
8 provider trust, or special purpose entity to finance the
9 purchase of policies by a viatical settlement provider and
10 the viator and insured have provided prior written consent
11 to the disclosure;

12 (5) necessary to allow the viatical settlement
13 provider or their authorized representatives to make
14 contacts for the purpose of determining health status; or

15 (6) required to purchase stop loss coverage.

16 Section 30. Examination of applicants and licensees.

17 (a) The Secretary may conduct an examination of a licensee
18 as often as the Secretary in his or her sole discretion deems
19 appropriate. The Secretary has the authority to order a
20 licensee or applicant to produce any records, books, files, or
21 other information reasonably necessary to ascertain whether or
22 not the licensee or applicant is acting or has acted in
23 violation of the law or otherwise contrary to the interests of
24 the public.

25 For purposes of completing an examination of a licensee
26 under this Act, the Secretary may examine or investigate any
27 person, or the business of any person, insofar as the
28 examination or investigation is, in the sole discretion of the
29 Secretary, necessary or material to the examination of the
30 licensee.

31 In lieu of an examination under this Act of any foreign or
32 alien licensee licensed in this State, the Secretary may, at
33 the Secretary's discretion, accept an examination report on the

1 licensee as prepared by the chief insurance regulatory official
2 for the licensee's state of domicile or port-of-entry state.

3 (b) A person required to be licensed by this Act shall for
4 5 years retain copies of:

5 (1) proposed, offered, or executed contracts,
6 underwriting documents, policy forms, and applications
7 from the date of the proposal, offer, or execution of the
8 contract, which ever is later;

9 (2) all checks, drafts, or other evidence and
10 documentation related to the payment, transfer, deposit,
11 or release of funds from the date of the transaction;

12 (3) all complaints received against the licensee and
13 those viatical settlement agents representing the
14 licensee; and

15 (4) all other records and documents related to the
16 requirements of this Act.

17 This subsection (b) does not relieve a person of the
18 obligation to produce these documents to the Secretary after
19 the retention period has expired if the person has retained the
20 documents.

21 Records required to be retained by this subsection (b) must
22 be legible and complete and may be retained in paper,
23 photograph, micro process, magnetic, mechanical, or electronic
24 media, or by any process that accurately reproduces or forms a
25 durable medium for the reproduction of a record.

26 The Secretary may adopt rules to prescribe the minimum
27 records that must be maintained by licensees.

28 (c) Upon determining that an examination should be
29 conducted, the Secretary shall issue an examination warrant
30 appointing one or more examiners to perform the examination and
31 instructing them as to the scope of the examination. In
32 conducting the examination, the examiner may employ guidelines
33 or procedures that the Secretary may deem appropriate.

34 Every licensee, its officers, directors, and agents, and

1 any other person from whom information is sought shall provide
2 to the examiners timely, convenient, and free access at all
3 reasonable hours at its offices to all books, records,
4 accounts, papers, documents, assets, and computer or other
5 recordings relating to the property, assets, business, and
6 affairs of the licensee being examined. The officers,
7 directors, employees, and agents of the licensee or person
8 shall facilitate the examination and aid in the examination so
9 far as it is in their power to do so. The refusal of a licensee
10 by its officers, directors, employees, or agents, to submit to
11 examination or to comply with any reasonable written request of
12 the Secretary shall be grounds for suspension or refusal to
13 renew of any license or authority held by the licensee to
14 engage in the viatical settlement business or other business
15 subject to the Secretary's jurisdiction. Any proceedings for
16 suspension, revocation, or refusal of any license or authority
17 shall be conducted pursuant to the Illinois Administrative
18 Procedures Act.

19 The Secretary or any of his or her examiners shall have the
20 power to issue subpoenas, to administer oaths, and to examine
21 under oath any person as to any matter pertinent to the
22 examination. Upon the failure or refusal of a person to obey a
23 subpoena, the Secretary may petition a court of competent
24 jurisdiction, and upon proper showing, the court may enter an
25 order compelling the witness to appear and testify or produce
26 documentary evidence. Failure to obey the court order shall be
27 punishable as contempt of court.

28 When making an examination under this Act, the Secretary
29 may retain attorneys, appraisers, independent actuaries,
30 independent certified public accountants, or other
31 professionals and specialists as examiners, the reasonable
32 cost of which shall be borne by the licensee that is the
33 subject of the examination.

34 (d) Nothing contained in this Act shall be construed to

1 limit the Secretary's authority to terminate or suspend an
2 examination in order to pursue other legal or regulatory action
3 pursuant to the insurance laws of this State. Findings of fact
4 and conclusions made pursuant to any examination shall be prima
5 facie evidence in any legal or regulatory action.

6 (e) Nothing contained in this Act shall be construed to
7 limit the Secretary's authority to use and, if appropriate, to
8 make public any final report.

9 (f) The Secretary may charge the expenses incurred in any
10 examination authorized by this Section to the person being
11 examined. The charge shall be reasonably related to the cost of
12 the examination, including, but not limited to, a per diem
13 charge of \$300 per examiner, electronic data processing costs,
14 costs related to the supervision and preparation of an
15 examination report, and lodging and travel expenses. All
16 lodging and travel expenses shall be in accordance with the
17 applicable travel rules published by the Department of Central
18 Management Services and approved by the Governor's Travel
19 Control Board, except that out-of-state lodging and travel
20 expenses shall be in accordance with travel rates prescribed
21 under 41 C.F.R. 301-7.2 for reimbursement of subsistence
22 expenses incurred during official travel. All lodging and
23 travel expenses may be reimbursed directly upon authorization
24 by the Secretary. All electronic data processing costs incurred
25 by the Department in the performance of any examination shall
26 be billed directly to the person being examined for payment to
27 the Statistical Services Revolving Fund. With the exception of
28 the direct reimbursements authorized by the Secretary, all
29 other examination charges collected by the Department shall be
30 paid to the Insurance Producers Administration Fund.

31 The payment of fees or charges shall be made by separate
32 check, or other payment method approved by the Secretary, for
33 each invoice issued by the Department.

34 Any fee or charge assessed pursuant to this Part for which

1 a payment due date has not been established must be paid within
2 30 days after the date of the Department's invoice.

3 Any company, person, or entity failing to make any payment
4 of \$100 or more as required under this subsection (f) is
5 liable, in addition to the tax and any penalties, for interest
6 on the deficiency at the rate of 12% per annum or at higher
7 adjusted rates as are or may be established under subsection
8 (b) of Section 6621 of the Internal Revenue Code, from the date
9 that payment was due, determined without regard to any
10 extensions, to the date of payment of the amount.

11 If a licensee fails to pay the full amount of any fee of
12 \$200 or more due under this subsection (f), there shall be
13 added to the amount due, as a penalty, the greater of \$100 or
14 an amount equal to 10% of the deficiency for each month or part
15 of a month that the deficiency remains unpaid.

16 If a licensee fails to timely pay the full amount of any
17 fee or charge of \$100 or more due under this subsection (f),
18 there may be added to the amount due, as a penalty, the greater
19 of \$50 or an amount equal to 5% of the deficiency for each
20 month or part of a month that the deficiency remains unpaid. In
21 addition to the fee or charge, interest on the deficiency shall
22 be assessed at the rate of 12% per annum or at higher adjusted
23 rates as are or may be established under subsection (b) of
24 Section 6621 of the Internal Revenue Code, from the date that
25 payment of the fee or charge was due to the date of payment of
26 the amount.

27 Any person or company required to pay a fee or charge
28 pursuant to this Section may request a hearing to be held for
29 the purposes of determining if the assessed fee or charge is
30 appropriate. The hearing request shall be made pursuant to 50
31 Ill. Admin. Code 2500.50 and shall be based only on (i) the
32 grounds set forth in Section 412 of the Illinois Insurance
33 Code, (ii) a mistake of fact, (iii) an error in calculation, or
34 (iv) an erroneous interpretation of a statute of this or any

1 other state.

2 (g) Examination reports shall be comprised only of facts
3 appearing upon the books, records, or other documents of the
4 licensee, its agents, or other persons examined, or as
5 ascertained from the testimony of its officers or agents or
6 other persons examined concerning its affairs and the
7 conclusions and recommendations that the examiners find
8 reasonably warranted from the facts.

9 (h) No later than 60 days following completion of the
10 examination, the examiner in charge shall file with the
11 Secretary a verified written report of examination under oath.
12 Upon receipt of the verified report, the Secretary shall
13 transmit the report to the licensee examined, together with a
14 notice that shall afford the licensee examined a reasonable
15 opportunity of not more than 30 days to make a written
16 submission or rebuttal with respect to any matters contained in
17 the examination report.

18 Within 30 days after the end of the period allowed for the
19 receipt of written submissions or rebuttals the Secretary shall
20 fully consider and review the report, together with any written
21 submissions or rebuttals and any relevant portions of the
22 examiner's workpapers and enter an order doing one of the
23 following:

24 (1) Adopting the examination report as filed or with
25 modification or corrections. If the examination report
26 reveals that the company is operating in violation of any
27 law, rule, or prior order of the Secretary, the Secretary
28 may order the company to take any action the Secretary
29 considers necessary and appropriate to cure the violation.

30 (2) Rejecting the examination report with directions
31 to the examiners to reopen the examination for purposes of
32 obtaining additional data, documentation, or information
33 and refiling.

34 (3) Calling for an investigatory hearing with no less

1 than 20 days notice to the company for purposes of
2 obtaining additional documentation, data, information, and
3 testimony.

4 All orders entered pursuant to this subsection (h) shall be
5 accompanied by findings and conclusions resulting from the
6 Secretary's consideration and review of the examination
7 report, relevant examiner workpapers, and any written
8 submissions or rebuttals. Any order issued pursuant to this
9 subsection (h) shall be considered a final administrative
10 decision and may be appealed pursuant to the Administrative
11 Review Law and shall be served upon the company by certified
12 mail, together with a copy of the adopted examination report.
13 Within 30 days of the issuance of the adopted report the
14 company shall file affidavits executed by each of its directors
15 stating under oath that they have received a copy of the
16 adopted report and related orders.

17 (i) Hearings conducted pursuant to this Section shall be
18 subject to the following requirements:

19 (1) Any hearing conducted pursuant to this Section by
20 the Secretary or the Secretary's authorized representative
21 shall be conducted as a nonadversarial confidential
22 investigatory proceeding as necessary for the resolution
23 of any inconsistencies, discrepancies, or disputed issues
24 apparent upon the face of the filed examination report or
25 raised by or as a result of the Secretary's review of
26 relevant workpapers or by the written submission or
27 rebuttal of the company. Within 20 days of the conclusion
28 of any hearing, the Secretary shall enter an order pursuant
29 to paragraph (1) of subsection (h) of this Section.

30 (2) The Secretary may appoint an authorized
31 representative to conduct the hearing, except that the
32 authorized representative may not be an examiner. The
33 hearing shall proceed expeditiously with discovery by the
34 company limited to the examiner's workpapers that tend to

1 substantiate any assertions set forth in any written
2 submission or rebuttal. The Secretary or the Secretary's
3 representative may issue subpoenas for the attendance of
4 any witnesses or the production of any documents considered
5 relevant to the investigation whether under the control of
6 the Secretary, the company, or other persons. The documents
7 produced shall be included in the record and testimony
8 taken by the Secretary or the Secretary's representative
9 shall be under oath and preserved for the record. Nothing
10 contained in this Section shall require the Secretary to
11 disclose any information or records that would indicate or
12 show the existence or content of any investigation or
13 activity of a criminal justice agency.

14 (3) The hearing shall proceed with the Secretary or the
15 Secretary's representative posing questions to the persons
16 subpoenaed. Thereafter, the company and the Secretary may
17 present testimony relevant to the investigation.
18 Cross-examination may be conducted only by the Secretary or
19 the Secretary's representative. The company and the
20 Secretary shall be permitted to make closing statements and
21 may be represented by the counsel of their choice.

22 (j) In the event the Secretary determines that regulatory
23 action is appropriate as a result of an examination, the
24 Secretary may initiate any proceedings or actions provided by
25 law.

26 (k) Names and individual identification data for all
27 violators shall be considered private and confidential
28 information and shall not be disclosed by the Secretary unless
29 required by law.

30 Except as otherwise provided in this Act, all examination
31 reports, working papers, recorded information, documents and
32 copies thereof produced by, obtained by or disclosed to the
33 Secretary or any other person in the course of an examination
34 made under this Act or the law of another state or jurisdiction

1 that is substantially similar to this Act, or in the course of
2 analysis or investigation by the Secretary of the financial
3 condition or market conduct of a licensee are (i) confidential
4 by law and privileged, (ii) not subject to the Freedom of
5 Information Act, (iii) not subject to subpoena, and (iv) not
6 subject to discovery or admissible in evidence in any private
7 civil action.

8 The Secretary is authorized to use the documents,
9 materials, or other information in the furtherance of any
10 regulatory or legal action brought as part of the Secretary's
11 official duties.

12 Documents, materials, or other information, including, but
13 not limited to, all working papers and copies thereof, in the
14 possession or control of the NAIC and its affiliates and
15 subsidiaries are:

16 (1) confidential by law and privileged;

17 (2) not subject to subpoena; and

18 (3) not subject to discovery or admissible in evidence
19 in any private civil action if they are:

20 (A) created, produced or obtained by or disclosed
21 to the NAIC and its affiliates and subsidiaries in the
22 course of assisting an examination made under this Act
23 or assisting the Secretary in the analysis or
24 investigation of the financial condition or market
25 conduct of a licensee; or

26 (B) disclosed to the NAIC and its affiliates and
27 subsidiaries under this subsection (k) by the
28 Secretary.

29 The Secretary or any person that received the documents,
30 material, or other information while acting under the authority
31 of the Secretary, including, but not limited to, the NAIC and
32 its affiliates and subsidiaries, is permitted to testify in any
33 private civil action concerning any confidential documents,
34 materials, or information subject to this subsection (k).

1 (1) In order to assist in the performance of the
2 Secretary's duties, the Secretary may:

3 (1) share documents, materials, or other information,
4 including the confidential and privileged documents,
5 materials, or information subject to subsection (k) of this
6 Section, with other state, federal, and international
7 regulatory agencies, with the NAIC and its affiliates and
8 subsidiaries, and with state, federal, and international
9 law enforcement authorities, provided that the recipient
10 agrees to maintain the confidentiality and privileged
11 status of the document, material, communication, or other
12 information;

13 (2) receive documents, materials, communications, or
14 information, including otherwise confidential and
15 privileged documents, materials, or information, from the
16 NAIC and its affiliates and subsidiaries and from
17 regulatory and law enforcement officials of other foreign
18 or domestic jurisdictions, and shall maintain as
19 confidential or privileged any document, material, or
20 information received with notice or the understanding that
21 it is confidential or privileged under the laws of the
22 jurisdiction that is the source of the document, material,
23 or information; and

24 (3) enter into agreements governing sharing and use of
25 information consistent with this Section.

26 (m) No waiver of any applicable privilege or claim of
27 confidentiality in the documents, materials, or information
28 shall occur as a result of disclosure to the Secretary under
29 this Section or as a result of sharing as authorized in
30 subsection (1) of this Section.

31 (n) A privilege established under the law of any state or
32 jurisdiction that is substantially similar to the privilege
33 established under this Section shall be available and enforced
34 in any proceeding in and in any court of this State.

1 (o) Nothing contained in this Act shall prevent or be
2 construed as prohibiting the Secretary from disclosing the
3 content of an examination report, preliminary examination
4 report or results, or any matter relating thereto, to the chief
5 insurance regulatory official of any other state or country, or
6 to law enforcement officials of this or any other state or
7 agency of the federal government at any time or to the NAIC, so
8 long as the agency or office receiving the report or matters
9 relating thereto agrees in writing to hold it confidential and
10 in a manner consistent with this Act.

11 (p) An examiner may not be appointed by the Secretary if
12 the examiner, either directly or indirectly, has a conflict of
13 interest or is affiliated with the management of or owns a
14 pecuniary interest in any person subject to examination under
15 this Act. This Section shall not be construed to automatically
16 preclude an examiner from being:

17 (1) a viator;

18 (2) an insured in a purchased policy; or

19 (3) a beneficiary in an insurance policy that is
20 proposed to be the subject of a viatical settlement
21 contract.

22 Notwithstanding the requirements of this subsection (p),
23 the Secretary may retain from time to time, on an individual
24 basis, qualified actuaries, certified public accountants, or
25 other similar individuals who are independently practicing
26 their professions, even though these persons may from time to
27 time be similarly employed or retained by persons subject to
28 examination under provisions of this Act.

29 (q) The expenses incurred in conducting any examination
30 shall be paid by the licensee or applicant.

31 (r) No cause of action shall arise nor shall any liability
32 be imposed against the Secretary, the Secretary's authorized
33 representatives, or any examiner appointed by the Secretary for
34 any statements made or conduct performed in good faith while

1 carrying out the provisions of this Section.

2 No cause of action shall arise, nor shall any liability be
3 imposed against any person for the act of communicating or
4 delivering information or data to the Secretary or the
5 Secretary's authorized representative or examiner pursuant to
6 an examination made under this Section, if the act of
7 communication or delivery was performed in good faith and
8 without fraudulent intent or the intent to deceive. This
9 subsection (r) does not abrogate or modify in any way any
10 common law or statutory privilege or immunity heretofore
11 enjoyed by any person identified in this subsection (r).

12 A person identified in this subsection (r) shall be
13 entitled to an award of attorney's fees and costs if he or she
14 is the prevailing party in a civil cause of action for libel,
15 slander, or any other relevant tort arising out of activities
16 in carrying out the provisions of this Section and the party
17 bringing the action was not substantially justified in doing
18 so. For purposes of this Section, a proceeding is
19 "substantially justified" if it had a reasonable basis in law
20 or fact at the time that it was initiated.

21 (s) The Secretary may investigate suspected fraudulent
22 viatical settlement acts and persons engaged in the business of
23 viatical settlements.

24 Section 35. Disclosure.

25 (a) With each application for a viatical settlement
26 contract, a viatical settlement provider or viatical
27 settlement broker shall provide the viator with at least the
28 following disclosures no later than the time the viatical
29 settlement contract is signed by all parties. The disclosures
30 must be provided in a separate document that is signed by the
31 viator and the viatical settlement provider or viatical
32 settlement broker, and shall provide the following
33 information:

1 (1) That there exist possible alternatives to a
2 viatical settlement contract including any accelerated
3 death benefits or policy loans offered under the viator's
4 life insurance policy.

5 (2) That a life insurance producer acting as a viatical
6 settlement broker negotiating a viatical settlement
7 contract represents only the viator and not the insurer or
8 the viatical settlement provider and owes a duty to the
9 viator to act according to the viator's instructions.

10 (3) That some or all of the proceeds of the viatical
11 settlement contract may be taxable under federal income tax
12 and state franchise and income taxes, and assistance may be
13 sought from a professional tax advisor.

14 (4) That proceeds of the viatical settlement contract
15 may be subject to the claims of creditors.

16 (5) That receipt of the proceeds of a viatical
17 settlement contract may adversely affect the viator's
18 eligibility for Medicaid or other government benefits or
19 entitlements, and advice may be obtained from the
20 appropriate government agencies.

21 (6) That the viator has the right to rescind a viatical
22 settlement contract before the earlier of 30 calendar days
23 after the date the viatical settlement contract is executed
24 by all parties or for 15 calendar days after the receipt of
25 the viatical settlement proceeds by the viator.
26 Rescission, if exercised by the viator, is effective only
27 if both notice of the rescission is given and repayment of
28 all proceeds and any premiums, loans, and loan interest to
29 the viatical settlement provider is made within the
30 rescission period. If the insured dies during the
31 rescission period, the viatical settlement contract is
32 deemed to have been rescinded, subject to repayment being
33 made to the viatical settlement provider of all viatical
34 settlement proceeds and any premiums, loans, and loan

1 interest within 45 days after the death of the insured.

2 (7) That funds must be sent to the viator within 3
3 business days after the viatical settlement provider has
4 received the insurer or group administrator's
5 acknowledgment that ownership of the purchased policy has
6 been transferred and the beneficiary has been designated.

7 (8) That entering into a viatical settlement contract
8 may cause other rights or benefits, including conversion
9 rights and waiver of premium benefits that may exist under
10 the policy, to be forfeited by the viator. Assistance may
11 be sought from a financial adviser.

12 (9) That the disclosure to a viator must include
13 distribution of a brochure, approved by the Secretary,
14 describing the process of viatical settlements.

15 (10) That the disclosure document must contain the
16 following language: "All medical, financial, or personal
17 information solicited or obtained by a viatical settlement
18 provider or a life insurance producer about an insured,
19 including the insured's identity or the identity of family
20 members, a spouse, or a significant other may be disclosed
21 as necessary to effect the viatical settlement contract
22 between the viator and the viatical settlement provider. If
23 you are asked to provide this information, you will be
24 asked to consent to the disclosure. The information may be
25 provided to someone who buys the policy or provides funds
26 for the purchase. You may be asked to renew your permission
27 to share information every 2 years.".

28 (11) That the insured may be contacted by either the
29 viatical settlement provider or its authorized
30 representative for the purpose of determining the
31 insured's health status. This contact is limited to once
32 every 3 months if the insured has a life expectancy of more
33 than one year, and no more than once each month if the
34 insured has a life expectancy of one year or less.

1 (b) A viatical settlement provider shall provide the viator
2 with at least the following disclosures no later than the date
3 the viatical settlement contract is signed by all parties. The
4 disclosures must be displayed conspicuously in the viatical
5 settlement contract or in a separate document signed by the
6 viator and the viatical settlement provider, and provide the
7 following information:

8 (1) The affiliation, if any, between the viatical
9 settlement provider and the issuer of the insurance policy
10 to be acquired pursuant to a viatical settlement contract.

11 (2) The name, address, and telephone number of the
12 viatical settlement provider.

13 (3) If a policy to be acquired pursuant to a viatical
14 settlement contract has been issued as a joint policy or
15 involves family riders or any coverage of a life other than
16 the insured under the policy to be acquired pursuant to a
17 viatical settlement contract, the viator must be informed
18 of the possible loss of coverage on the other lives under
19 the policy and must be advised to consult with his or her
20 insurance producer or the insurer issuing the policy for
21 advice on the proposed viatical settlement contract.

22 (4) The dollar amount of the current death benefit
23 payable to the viatical settlement provider under the
24 policy. If known, the viatical settlement provider also
25 shall disclose the availability of additional guaranteed
26 insurance benefits, the dollar amount of accidental death
27 and dismemberment benefits under the policy or
28 certificate, and the viatical settlement provider's
29 interest in those benefits.

30 (5) The name, business address, and telephone number of
31 the independent third party escrow agent, and the fact that
32 the viator may inspect or receive copies of the relevant
33 escrow or trust agreements or documents.

34 (c) If the viatical settlement provider transfers

1 ownership or changes the beneficiary of the policy, the
2 viatical settlement provider shall communicate the change in
3 ownership or beneficiary to the insured within 20 days after
4 the change.

5 Section 40. General rules.

6 (a) A viatical settlement provider entering into a viatical
7 settlement contract shall first obtain:

8 (1) if the viator is the insured, a written statement
9 from a licensed attending physician that the viator is of
10 sound mind and under no constraint or undue influence to
11 enter into a viatical settlement contract; and

12 (2) a document in which the insured consents to the
13 release of his or her medical records to a viatical
14 settlement provider or viatical settlement broker and, if
15 the policy was issued less than 3 years from the date of
16 application for a viatical settlement contract, to the
17 insurance company that issued the policy.

18 (b) The insurer shall respond to a request for verification
19 of coverage submitted by a viatical settlement provider or
20 viatical settlement broker not later than 30 calendar days
21 after the date the request is received. The request for
22 verification of coverage must be made on a form approved by the
23 Secretary and signed by the policyowner or certificate holder.
24 The insurer shall complete and issue the verification of
25 coverage or indicate in which respects it is unable to respond.
26 In its response, the insurer shall indicate whether, based on
27 the medical evidence and documents provided, the insurer
28 intends to pursue an investigation at that time regarding the
29 validity of the insurance contract or possible fraud.

30 (c) Before or at the time of execution of the viatical
31 settlement contract, the viatical settlement provider shall
32 obtain a witnessed document in which the viator consents to the
33 viatical settlement contract, represents that the viator has a

1 full and complete understanding of the viatical settlement
2 contract and the benefits of the policy, acknowledges that the
3 viator is entering into the viatical settlement contract freely
4 and voluntarily, and, for persons with a terminal or chronic
5 illness or condition, acknowledges that the insured has a
6 terminal or chronic illness or condition and that the terminal
7 or chronic illness or condition was diagnosed after the policy
8 was issued.

9 (d) If a viatical settlement broker performs any of these
10 activities required of the viatical settlement provider, the
11 viatical settlement provider is deemed to have fulfilled the
12 requirements of this Section.

13 (e) All medical information solicited or obtained by any
14 licensee shall be subject to the requirements of Article XL of
15 the Illinois Insurance Code.

16 (f) A viatical settlement contract entered into in this
17 State shall provide the viator with an unconditional right to
18 rescind the contract before the earlier of 30 calendar days
19 after the date the viatical settlement contract is executed by
20 all parties or 15 calendar days from the receipt of the
21 viatical settlement proceeds by the viator. Rescission, if
22 exercised by the viator, is effective only if both notice of
23 the rescission is given and repayment of all proceeds and any
24 premiums, loans, and loan interest to the viatical settlement
25 provider is made within the rescission period. If the insured
26 dies during the rescission period, the viatical settlement
27 contract shall be deemed to have been rescinded, subject to
28 repayment being made to the viatical settlement provider of all
29 viatical settlement proceeds and any premiums, loans, and loan
30 interest within 90 days after the death of the insured.

31 (g) The viatical settlement provider shall instruct the
32 viator to send the executed documents required to effect the
33 change in ownership, assignment, or change in beneficiary
34 directly to the independent escrow agent. Within 3 business

1 days after the date the escrow agent receives the documents, or
2 within 3 days after the date the viatical settlement provider
3 receives the documents if the viator erroneously provides the
4 documents directly to the viatical settlement provider, the
5 viatical settlement provider shall pay or transfer the proceeds
6 of the viatical settlement contract into an escrow or trust
7 account maintained in a State or federally chartered financial
8 institution whose deposits are insured by the Federal Reserve
9 System. Upon payment of the viatical settlement proceeds into
10 the escrow account, the escrow agent shall deliver the original
11 change in ownership, assignment, or change in beneficiary forms
12 to the viatical settlement provider or related provider trust.
13 Upon the escrow agent's receipt of the acknowledgment of the
14 properly completed transfer of ownership, assignment, or
15 designation of beneficiary from the insurance company, the
16 escrow agent shall pay the viatical settlement proceeds to the
17 viator.

18 (h) Failure to tender consideration to the viator for the
19 viatical settlement by contract within the time disclosed
20 pursuant to this Code renders the viatical settlement contract
21 voidable by the viator for lack of consideration until the time
22 consideration is tendered to and accepted by the viator.

23 (i) contact with the insured, for the purpose of
24 determining the health status of the insured by the viatical
25 settlement provider after the viatical settlement contract has
26 been executed, may only be made by the licensed viatical
27 settlement provider or its authorized representatives and is
28 limited to once every 3 months for insureds with a life
29 expectancy of more than one year, and not more than once each
30 month for insureds with a life expectancy of one year or less.
31 The viatical settlement provider shall explain the procedure
32 for these contacts at the time the viatical settlement contract
33 is entered into. The limitations provided for in this
34 subsection (i) do not apply to a contact with an insured for

1 reasons other than determining the insured's health status. A
2 viatical settlement provider is responsible for the actions of
3 its authorized representatives.

4 Section 45. Authority to adopt rules.

5 (a) The Secretary shall have the authority to do all the
6 following:

7 (1) Issue rules implementing this Act.

8 (2) Establish standards for evaluating reasonableness
9 of payments under a viatical settlement contract for a
10 person who is terminally or chronically ill. This authority
11 includes, but is not limited to, regulation of discount
12 rates used to determine the amount paid in exchange for
13 assignment, transfer, sale, devise, or bequest of a benefit
14 under a policy. A viatical settlement provider, where the
15 insured is not terminally or chronically ill, shall pay an
16 amount greater than the cash surrender value or accelerated
17 death benefit then available.

18 (3) Establish appropriate licensing requirements,
19 fees, and standards for continued licensure for a viatical
20 settlement provider and a fee for life insurance producers
21 acting as viatical settlement brokers.

22 (4) Require a bond or other mechanism for financial
23 accountability for a viatical settlement provider.

24 (5) Adopt rules governing the relationship and
25 responsibilities of an insurer and a viatical settlement
26 provider, viatical settlement broker, and others in the
27 business of viatical settlements during the period of
28 consideration or effectuation of a viatical settlement
29 contract.

30 (b) Any rules adopted pursuant to the authority granted in
31 the Viatical Settlements Act shall remain in effect until
32 repealed or modified by rules adopted by the Secretary pursuant
33 to this Act.

1 Section 50. Application.

2 (a) A viatical settlement provider lawfully transacting
3 business in this State may continue to do so pending approval
4 or disapproval of the viatical settlement provider's
5 application for a license under this Act as long as the
6 application is filed with the Secretary not later than 30 days
7 after the effective date of this Act.

8 (b) A viatical settlement provider licensed in this State
9 on or before the effective date of this Act may continue to
10 transact business under that license, but must revise any
11 licensing information at the time of the license renewal, if
12 applicable. All viatical settlement contract forms and
13 disclosure statement forms of the provider shall be deemed to
14 be in continued force and effect, provided, however, that the
15 forms shall be modified by the licensed viatical settlement
16 provider to conform with the provisions of Section 35 of this
17 Act within 90 days after the effective date of this Act.

18 (c) A person who has lawfully negotiated viatical
19 settlement contracts between a viator and one or more viatical
20 settlement providers in this State for at least one year
21 immediately prior to the effective date of this Act may
22 continue to negotiate viatical settlements in this State for a
23 period of 60 days after the effective date of this Act, at
24 which time the person must either become a licensed life
25 insurance producer permitted to act as a viatical settlement
26 broker or cease negotiating viatical settlement contracts.

27 Section 55. Violations. It is a violation of this Act for a
28 person to enter into a viatical settlement contract at any time
29 prior to the application for or issuance of a policy which is
30 the subject of a viatical settlement contract or for a 2-year
31 period commencing with the date of issuance of the policy
32 unless the viator certifies to the viatical settlement provider

1 that one or more of the following conditions have been met
2 within the 2-year period:

3 (1) The policy was issued upon the viator's exercise of
4 conversion rights arising out of a group or individual
5 policy, provided the total of the time covered under the
6 conversion policy plus the time covered under the prior
7 policy is at least 24 months. The time covered under a
8 group policy must be calculated without regard to a change
9 in insurance carriers, provided the coverage has been
10 continuous and under the same group sponsorship.

11 (2) The viator submits independent evidence to the
12 viatical settlement provider that one or more of the
13 following conditions have been met within the 2-year
14 period:

15 (A) the viator or insured is terminally or
16 chronically ill; or

17 (B) the viator or insured disposes of his ownership
18 interests in a closely held corporation, pursuant to
19 the terms of a buyout or other similar agreement in
20 effect at the time the insurance policy was initially
21 issued.

22 Copies of the independent evidence described in paragraph
23 (2) of this Section and documents required by this Act must be
24 submitted to the insurer when the viatical settlement provider
25 submits a request to the insurer for verification of coverage.
26 The copies must be accompanied by a letter of attestation from
27 the viatical settlement provider that the copies are true and
28 correct copies of the documents received by the viatical
29 settlement provider.

30 If the viatical settlement provider submits to the insurer
31 a copy of independent evidence provided for in paragraph (2) of
32 this Section when the viatical settlement provider submits a
33 request to the insurer to effect the transfer of the policy to
34 the viatical settlement provider, the copy is deemed to

1 conclusively establish that the viatical settlement contract
2 satisfies the requirements of this Section and the insurer
3 shall respond timely to the request.

4 Section 60. Advertisements.

5 (a) The purpose of this Section is to provide a prospective
6 viator with clear and unambiguous statements in the
7 advertisement of a viatical settlement contract and to assure
8 the clear, truthful, and adequate disclosure of the benefits,
9 risks, limitations, and exclusions of a viatical settlement
10 contract. This purpose is to be accomplished by the
11 establishment of guidelines and standards of permissible and
12 impermissible conduct in the advertising of a viatical
13 settlement contract to assure that a product description is
14 presented in a manner that prevents unfair, deceptive, or
15 misleading advertising and is conducive to accurate
16 presentation and description of a viatical settlement contract
17 through the advertising media and material used by a licensee.

18 (b) This Section applies to an advertising of a viatical
19 settlement contract or a related product or service intended
20 for dissemination in this State, including Internet
21 advertising viewed by a person located in this State. Where
22 disclosure requirements are established pursuant to federal
23 regulation, this Section must be interpreted so as to minimize
24 or eliminate conflict with federal regulation wherever
25 possible.

26 (c) Each viatical settlement licensee shall establish and
27 at all times maintain a system of control over the content,
28 form, and method of dissemination of an advertisement of its
29 contracts, products, and services. An advertisement,
30 regardless of who wrote, created, designed, or presented, is
31 the responsibility of the licensee, as well as the individual
32 who created or presented the advertisement. A system of control
33 by the licensee must include regular routine notification at

1 least once a year to agents and others authorized to
2 disseminate advertisements of the requirements and procedures
3 for approval before the use of an advertisement not furnished
4 by the licensee.

5 (d) An advertisement must be truthful and not misleading in
6 fact or by implication. The form and content of an
7 advertisement of a viatical settlement contract must be
8 sufficiently complete and clear so as to avoid deception. It
9 shall not have the capacity or tendency to mislead or deceive.
10 Whether an advertisement has the capacity or tendency to
11 mislead or deceive shall be determined by the Secretary from
12 the overall impression that the advertisement may be reasonably
13 expected to create upon a person of average education or
14 intelligence within the segment of the public to which it is
15 directed.

16 (e) The information required to be disclosed pursuant to
17 the provisions of this Section may not be minimized, rendered
18 obscure, or presented in an ambiguous fashion or intermingled
19 with the text of the advertisement so as to be confusing or
20 misleading.

21 (1) An advertisement may not omit material information
22 or use words, phrases, statements, references, or
23 illustrations if the omission or use has the capacity,
24 tendency, or effect of misleading or deceiving the public
25 as to the nature or extent of any benefit, loss covered, or
26 State or federal tax consequence. The fact that the
27 viatical settlement contract offered is made available for
28 inspection before consummation of the sale, or an offer is
29 made to refund the payment if the viator is not satisfied,
30 or that the viatical settlement contract includes a "free
31 look" period that satisfies or exceeds legal requirements
32 does not remedy misleading statements.

33 (2) An advertisement may not use the name or title of a
34 life insurance company or a life insurance policy unless

1 the advertisement has been approved by the insurer.

2 (3) An advertisement may not state or imply that
3 interest charged on an accelerated death benefit or a
4 policy loan is unfair, inequitable, or in any manner an
5 incorrect or improper practice.

6 (4) The words "free", "no cost", "without cost", "no
7 additional cost", "at no extra cost", or words of similar
8 import may not be used with respect to a benefit or service
9 unless true. An advertisement may specify the charge for a
10 benefit or service or may state that a charge is included
11 in the payment or use other appropriate language.

12 (5) Any testimonial, appraisal, or analysis used in an
13 advertisement must:

14 (A) be genuine;

15 (B) represent the current opinion of the author;

16 (C) be applicable to the viatical settlement
17 contract, product, or service advertised, if any; and

18 (D) be accurately reproduced with sufficient
19 completeness to avoid misleading or deceiving
20 prospective viators as to the nature or scope of any
21 testimonial, appraisal, analysis, or endorsement.

22 In using any testimonial, appraisal, or analysis, the
23 viatical settlement licensee makes as its own all the
24 statements contained in them, and the statements are
25 subject to all the provisions of this Section.

26 If the individual making a testimonial, appraisal,
27 analysis, or an endorsement has a financial interest in the
28 viatical settlement provider or related entity as a
29 stockholder, director, officer, employee, or otherwise or
30 receives a benefit, directly or indirectly, other than
31 required union scale wages, that fact must be disclosed
32 prominently in the advertisement.

33 An advertisement may not state or imply that a viatical
34 settlement contract, benefit, or service has been approved

1 or endorsed by a group of individuals, society,
2 association, or other organization, unless that is the fact
3 and unless any relationship between an organization and the
4 licensee is disclosed. If the entity making the endorsement
5 or testimonial is owned, controlled, or managed by the
6 licensee or receives payment or other consideration from
7 the licensee for making an endorsement or testimonial, that
8 fact must be disclosed in the advertisement.

9 If an endorsement refers to benefits received under a
10 viatical settlement contract, all pertinent information
11 must be retained for a period of 5 years after its use.

12 (f) An advertisement may not contain statistical
13 information unless it accurately reflects recent and relevant
14 facts. The source of all statistics used in an advertisement
15 must be identified.

16 (g) An advertisement may not disparage insurers, viatical
17 settlement providers, insurance producers, policies, services,
18 or methods of marketing.

19 (h) The name of the viatical settlement licensee must be
20 identified clearly in all advertisements about the licensee or
21 its viatical settlement contract, products, or services, and if
22 any specific viatical settlement contract is advertised, the
23 viatical settlement contract must be identified either by form
24 number or some other appropriate description. If an application
25 is part of the advertisement, the name of the viatical
26 settlement provider must be shown on the application.

27 (i) An advertisement shall not use a trade name, group
28 designation, name of the parent company of a licensee, name of
29 a particular division of the licensee, service mark, slogan,
30 symbol, or other device or reference without disclosing the
31 name of the licensee if the advertisement has the capacity or
32 tendency to mislead or deceive as to the true identity of the
33 licensee or to create the impression that a company other than
34 the licensee has any responsibility for the financial

1 obligation under a viatical settlement contract.

2 (j) An advertisement shall not use any combination of
3 words, symbols, or physical materials that by their content,
4 phraseology, shape, color, or other characteristics are so
5 similar to a combination of words, symbols, or physical
6 materials used by a government program or agency or otherwise
7 appear to be of such a nature that they tend to mislead
8 prospective viators into believing that the solicitation is in
9 some manner connected with a government program or agency.

10 (k) An advertisement may state that a licensee is licensed
11 in the state where the advertisement appears, provided it does
12 not exaggerate that fact or suggest or imply that the competing
13 licensee may not be so licensed. The advertisement may ask the
14 audience to consult the licensee's web site or contact that
15 state's department of insurance to find out if that state
16 requires licensing and, if so, whether the licensee or any
17 other company is licensed.

18 (l) An advertisement may not create the impression that the
19 viatical settlement provider, its financial condition or
20 status, the payment of its claims, or the merits, desirability,
21 or advisability of its viatical settlement contracts are
22 recommended or endorsed by any government entity.

23 (m) The name of the actual licensee must be stated in all
24 of its advertisements. An advertisement may not use a trade
25 name, any group designation, name of any affiliate or
26 controlling entity of the licensee, service mark, slogan,
27 symbol, or other device in a manner that has the capacity or
28 tendency to mislead or deceive as to the true identity of the
29 actual licensee or create the false impression that an
30 affiliate or controlling entity has any responsibility for the
31 financial obligation of the licensee.

32 (n) An advertisement may not, directly or indirectly,
33 create the impression that any division or agency of the State
34 or of the United States government endorses, approves, or

1 favors:

2 (1) a licensee or its business practices or methods of
3 operation;

4 (2) the merits, desirability, or advisability of a
5 viatical settlement contract;

6 (3) any viatical settlement contract; or

7 (4) any policy or life insurance company.

8 (o) If the advertiser emphasizes the speed with which the
9 viatical settlement contract occurs, the advertising must
10 disclose the average time frame from completed application to
11 the date of offer and from acceptance of the offer to receipt
12 of the funds by the viator.

13 (p) If the advertising emphasizes the dollar amounts
14 available to viators, the advertising shall disclose the
15 average purchase price as a percent of face value obtained by
16 viators contracting with the licensee during the past 6 months.

17 (q) Certain viatical settlement advertisements are deemed
18 false and misleading on their face and are prohibited. False
19 and misleading viatical settlement advertisements include, but
20 are not limited to, the following representations:

21 (1) "guaranteed", "fully secured", "100 percent
22 secured", "fully insured", "secure", "safe", "backed by
23 rated insurance companies", "backed by federal law",
24 "backed by state law", "state guaranty funds", or similar
25 representations;

26 (2) "no risk", "minimal risk", "low risk", "no
27 speculation", "no fluctuation", or similar
28 representations;

29 (3) "qualified or approved for individual retirement
30 accounts (IRAs), Roth IRAs, 401(k) plans, simplified
31 employee pensions (SEP), 403(b), Keogh plans, TSA, and
32 other retirement account rollovers", "tax deferred", or
33 similar representations;

34 (4) use of the word "guaranteed" to describe the fixed

1 return, annual return, principal, earnings, profits,
2 investment, or similar representations;

3 (5) "no sales charges or fees" or similar
4 representations;

5 (6) "high yield", "superior return", "excellent
6 return", "high return", "quick profit", or similar
7 representations; and

8 (7) purported favorable representations or
9 testimonials about the benefits of viatical settlement
10 contracts or viatical settlement purchase agreements as an
11 investment taken out of context from newspapers, trade
12 papers, journals, radio and television programs, and all
13 other forms of print and electronic media.

14 Section 65. Fraudulent viatical settlement acts.

15 (a) A person may not commit a fraudulent viatical
16 settlement act.

17 (b) A person, knowingly or intentionally, may not interfere
18 with the enforcement of the provisions of this Act or
19 investigations of suspected or actual violations of this Act.

20 (c) A person in the business of viatical settlements may
21 not knowingly or intentionally permit a person convicted of a
22 felony involving dishonesty or breach of trust to participate
23 in the business of viatical settlements.

24 (d) A viatical settlement contract and an application for a
25 viatical settlement contract, regardless of the form of
26 transmission, must contain the following statement or a
27 substantially similar statement: "Any person who knowingly
28 presents false information in an application for insurance or
29 viatical settlement contract is guilty of a crime and, upon
30 conviction, may be subject to fines or confinement in prison or
31 both."

32 The lack of a statement as provided for in in this
33 subsection (d) does not constitute a defense in any prosecution

1 for a fraudulent viatical settlement act.

2 (e) A person engaged in the business of viatical
3 settlements having knowledge or a reasonable belief that a
4 fraudulent viatical settlement act is being, will be, or has
5 been committed shall provide to the Secretary the information
6 required by the Secretary in a manner prescribed by the
7 Secretary.

8 Another person having knowledge or a reasonable belief that
9 a fraudulent viatical settlement act is being, will be, or has
10 been committed may provide to the Secretary the information
11 required by the Secretary in a manner prescribed by the
12 Secretary.

13 (f) Civil liability may not be imposed on and a cause of
14 action may not arise from a person's furnishing information
15 concerning suspected, anticipated, or completed fraudulent
16 viatical settlement acts, or suspected or completed fraudulent
17 insurance acts, if the information is provided to or received
18 from:

19 (A) the Secretary or the Secretary's employees,
20 agents, or representatives;

21 (B) federal, state, or local law enforcement or
22 regulatory officials or their employees, agents, or
23 representatives;

24 (C) a person involved in the prevention and
25 detection of fraudulent viatical settlement acts or
26 that person's agents, employees, or representatives;

27 (D) the National Association of Insurance
28 Commissioners (NAIC), National Association of
29 Securities Dealers (NASD), the North American
30 Securities Administrators Association (NASAA), or
31 their employees, agents, or representatives, or other
32 regulatory body overseeing life insurance or viatical
33 settlement contracts; or

34 (E) the insurer that issued the policy covering the

1 life of the insured.

2 This subsection (f) does not apply to a statement made with
3 actual malice. In an action brought against a person for filing
4 a report or furnishing other information concerning a
5 fraudulent viatical settlement act or a fraudulent insurance
6 act, the party bringing the action shall plead specifically any
7 allegation that this subsection (f) does not apply because the
8 person filing the report or furnishing the information did so
9 with actual malice.

10 A person identified in this subsection (f) is entitled to
11 an award of attorney's fees and costs if he or she is the
12 prevailing party in a civil cause of action for libel, slander,
13 or another relevant tort arising out of activities in carrying
14 out the provisions of this Act and the party bringing the
15 action was not substantially justified in doing so. For
16 purposes of this Section, a proceeding is "substantially
17 justified" if it had a reasonable basis in law or fact at the
18 time that it was initiated.

19 This Section does not abrogate or modify common law or
20 statutory privileges or immunities enjoyed by a person
21 described in this subsection (f).

22 This subsection (f) does not apply to a person's furnishing
23 information concerning his own suspected, anticipated, or
24 completed fraudulent viatical settlement acts or suspected,
25 anticipated, or completed fraudulent insurance acts.

26 (g) The documents and evidence provided pursuant to
27 subsection (f) of this Section or obtained by the Secretary in
28 an investigation of suspected or actual fraudulent viatical
29 settlement acts are privileged and confidential and are not a
30 public record and are not subject to discovery or subpoena in a
31 civil or criminal action.

32 The provisions of this subsection (g) do not prohibit
33 release by the Secretary of documents and evidence obtained in
34 an investigation of suspected or actual fraudulent viatical

1 settlement acts:

2 (1) in administrative or judicial proceedings to
3 enforce laws administered by the Secretary;

4 (2) to federal, state, or local law enforcement or
5 regulatory agencies, to an organization established for
6 the purpose of detecting and preventing fraudulent
7 viatical settlement acts, or to the NAIC; or

8 (3) at the discretion of the Secretary, to a person in
9 the business of viatical settlements that is aggrieved by a
10 fraudulent viatical settlement act.

11 Release of documents and evidence as provided by this
12 subsection (g) does not abrogate or modify the privilege
13 granted in this subsection (g).

14 (h) This Act does not:

15 (1) preempt the authority or relieve the duty of other
16 law enforcement or regulatory agencies to investigate,
17 examine, and prosecute suspected violations of law;

18 (2) prevent or prohibit a person from disclosing
19 voluntarily information concerning fraudulent viatical
20 settlement acts to a law enforcement or regulatory agency
21 other than the Department of Financial and Professional
22 Regulation; or

23 (3) limit the powers granted elsewhere by the laws of
24 this State to the Secretary or an insurance fraud unit to
25 investigate and examine possible violations of law and to
26 take appropriate action against wrongdoers.

27 (i) A viatical settlement provider shall adopt anti-fraud
28 initiatives reasonably calculated to detect, assist in the
29 prosecution of, and prevent fraudulent viatical settlement
30 acts. The Secretary may order or, if a licensee requests, may
31 grant these modifications of the following required
32 initiatives as necessary to ensure an effective anti-fraud
33 program. The modifications may be more or less restrictive than
34 the required initiatives so long as the modifications

1 reasonably may be expected to accomplish the purpose of this
2 Section. Anti-fraud initiatives include, but are not limited
3 to:

4 (1) Fraud investigators, who may be a viatical
5 settlement provider or employees or independent
6 contractors of those viatical settlement providers.

7 (2) An anti-fraud plan that shall always be available
8 to the Secretary. The anti-fraud plan must include, but is
9 not limited to:

10 (A) a description of the procedures for detecting
11 and investigating possible fraudulent viatical
12 settlement acts and procedures for resolving material
13 inconsistencies between medical records and insurance
14 applications;

15 (B) a description of the procedures for reporting
16 possible fraudulent viatical settlement acts to the
17 Secretary;

18 (C) a description of the plan for anti-fraud
19 education and training of underwriters and other
20 personnel; and

21 (D) a chart outlining the organizational
22 arrangement of the anti-fraud personnel who are
23 responsible for the investigation and reporting of
24 possible fraudulent viatical settlement acts and
25 investigating unresolved material inconsistencies
26 between medical records and insurance applications.

27 Anti-fraud plans submitted to the Secretary are privileged
28 and confidential and are not a public record pursuant to the
29 provisions of the Freedom of Information Act and are not
30 subject to discovery or subpoena in a civil or criminal action.

31 Section 70. Additional penalties.

32 (a) In addition to the penalties and other enforcement
33 provisions of this Act, if a person violates the provisions of

1 this Act or any rule implementing this Act, the Secretary may
2 seek an injunction in a court of competent jurisdiction and may
3 apply for temporary and permanent orders as the Secretary
4 determines are necessary to restrain the person from committing
5 the violation.

6 (b) A person damaged by the acts of a person in violation
7 of this Act may bring a civil action against the person
8 committing the violation in a court of competent jurisdiction.

9 (c) The Secretary may issue a cease and desist order upon a
10 person that violates any provision of this Act, any rule or
11 order adopted by the Secretary, or any written agreement
12 entered into with the Secretary.

13 (d) When the Secretary finds that an activity in violation
14 of this Act presents an immediate danger to the public that
15 requires an immediate final order, the Secretary may issue an
16 emergency cease and desist order reciting with particularity
17 the facts underlying the findings. The emergency cease and
18 desist order is effective immediately upon service of a copy of
19 the order on the respondent and remains effective for 90 days.
20 If the Secretary begins nonemergency cease and desist
21 proceedings, the emergency cease and desist order remains
22 effective absent an order by a court of competent jurisdiction.

23 (e) In addition to the penalties and other enforcement
24 provisions of this Act, a person who violates this Act is
25 subject to civil penalties of up to \$10,000 for each violation.
26 Imposition of civil penalties is pursuant to an order of the
27 Secretary. The Secretary's order may require a person found to
28 be in violation of this Act to make restitution to a person
29 aggrieved by violations of this Act.

30 (f) A person who violates a provision of this Act, upon
31 conviction, must be ordered to pay restitution to a person
32 aggrieved by the violation of this Act. Restitution must be
33 ordered in addition to a fine or imprisonment and not instead
34 of a fine or imprisonment.

1 (g) A person who violates a provision of this Act, upon
2 conviction, must be sentenced based on the greater of the value
3 of property, services, or other benefits wrongfully obtained or
4 attempted to be obtained, or the aggregate economic loss
5 suffered by any person as a result of the violation. A person
6 convicted of theft of property through a viatical settlement
7 transaction in which the value of viatical settlement contract:

8 (1) exceeds \$500,000 is guilty of a Class 1
9 non-probationable felony;

10 (2) exceeds \$100,000 but does not exceed \$500,000 is
11 guilty of a Class 1 felony;

12 (3) exceeds \$10,000 but does not exceed \$100,000 is
13 guilty of a Class 2 felony; or

14 (4) exceeds \$300 but does not exceed \$10,000 is guilty
15 of a Class 3 felony.

16 (h) A person convicted of a fraudulent viatical settlement
17 act must be ordered to pay restitution to a person aggrieved by
18 the fraudulent viatical settlement act. Restitution must be
19 ordered in addition to a fine or imprisonment but not instead
20 of a fine or imprisonment.

21 (i) In a prosecution provided under subsection (h) of this
22 Section, the value of a viatical settlement contract within a
23 6-month period may be aggregated and the defendant charged
24 accordingly in applying the provisions of subsection (g) of
25 this Section. If 2 or more offenses are committed by the same
26 person in 2 or more counties, the accused may be prosecuted in
27 a county in which one of the offenses was committed for all of
28 the offenses aggregated as provided by this Section. The
29 statute of limitations does not begin to run until the
30 insurance company or law enforcement agency is aware of the
31 fraud, but the prosecution may not be commenced later than 7
32 years after the act has occurred.

33 Section 75. Unfair methods of competition or unfair and

1 deceptive acts or practices. A violation of this Act is
2 considered an unfair method of competition or unfair and
3 deceptive act or practice pursuant to the provisions of Article
4 XXVI of the Illinois Insurance Code and subject to the
5 penalties contained in that Article.

6 Section 80. Illinois Securities Law of 1953. Nothing in
7 this Act preempts or otherwise limits the provisions of the
8 Illinois Securities Law of 1953, as amended, or any
9 regulations, orders, policy statements, notices, bulletins, or
10 other interpretations issued by or through the Secretary of
11 State or his or her designee acting pursuant to the Illinois
12 Securities Law of 1953, as amended. Compliance with the
13 provisions of this Act does not constitute compliance with any
14 applicable provision of the Illinois Securities Law of 1953, as
15 amended, and any amendments thereto or any regulations, orders,
16 policy statements, notices, bulletins, or other
17 interpretations issued by or through the Secretary of State or
18 his or her designee acting pursuant to the Illinois Securities
19 Law of 1953, as amended.

20 (215 ILCS 158/Act rep.)

21 Section 900. The Viatical Settlements Act is repealed.

22 Section 905. The Freedom of Information Act is amended by
23 changing Section 7 as follows:

24 (5 ILCS 140/7) (from Ch. 116, par. 207)

25 Sec. 7. Exemptions.

26 (1) The following shall be exempt from inspection and
27 copying:

28 (a) Information specifically prohibited from
29 disclosure by federal or State law or rules and regulations
30 adopted under federal or State law.

1 (b) Information that, if disclosed, would constitute a
2 clearly unwarranted invasion of personal privacy, unless
3 the disclosure is consented to in writing by the individual
4 subjects of the information. The disclosure of information
5 that bears on the public duties of public employees and
6 officials shall not be considered an invasion of personal
7 privacy. Information exempted under this subsection (b)
8 shall include but is not limited to:

9 (i) files and personal information maintained with
10 respect to clients, patients, residents, students or
11 other individuals receiving social, medical,
12 educational, vocational, financial, supervisory or
13 custodial care or services directly or indirectly from
14 federal agencies or public bodies;

15 (ii) personnel files and personal information
16 maintained with respect to employees, appointees or
17 elected officials of any public body or applicants for
18 those positions;

19 (iii) files and personal information maintained
20 with respect to any applicant, registrant or licensee
21 by any public body cooperating with or engaged in
22 professional or occupational registration, licensure
23 or discipline;

24 (iv) information required of any taxpayer in
25 connection with the assessment or collection of any tax
26 unless disclosure is otherwise required by State
27 statute;

28 (v) information revealing the identity of persons
29 who file complaints with or provide information to
30 administrative, investigative, law enforcement or
31 penal agencies; provided, however, that identification
32 of witnesses to traffic accidents, traffic accident
33 reports, and rescue reports may be provided by agencies
34 of local government, except in a case for which a

1 criminal investigation is ongoing, without
2 constituting a clearly unwarranted per se invasion of
3 personal privacy under this subsection; and

4 (vi) the names, addresses, or other personal
5 information of participants and registrants in park
6 district, forest preserve district, and conservation
7 district programs.

8 (c) Records compiled by any public body for
9 administrative enforcement proceedings and any law
10 enforcement or correctional agency for law enforcement
11 purposes or for internal matters of a public body, but only
12 to the extent that disclosure would:

13 (i) interfere with pending or actually and
14 reasonably contemplated law enforcement proceedings
15 conducted by any law enforcement or correctional
16 agency;

17 (ii) interfere with pending administrative
18 enforcement proceedings conducted by any public body;

19 (iii) deprive a person of a fair trial or an
20 impartial hearing;

21 (iv) unavoidably disclose the identity of a
22 confidential source or confidential information
23 furnished only by the confidential source;

24 (v) disclose unique or specialized investigative
25 techniques other than those generally used and known or
26 disclose internal documents of correctional agencies
27 related to detection, observation or investigation of
28 incidents of crime or misconduct;

29 (vi) constitute an invasion of personal privacy
30 under subsection (b) of this Section;

31 (vii) endanger the life or physical safety of law
32 enforcement personnel or any other person; or

33 (viii) obstruct an ongoing criminal investigation.

34 (d) Criminal history record information maintained by

1 State or local criminal justice agencies, except the
2 following which shall be open for public inspection and
3 copying:

4 (i) chronologically maintained arrest information,
5 such as traditional arrest logs or blotters;

6 (ii) the name of a person in the custody of a law
7 enforcement agency and the charges for which that
8 person is being held;

9 (iii) court records that are public;

10 (iv) records that are otherwise available under
11 State or local law; or

12 (v) records in which the requesting party is the
13 individual identified, except as provided under part
14 (vii) of paragraph (c) of subsection (1) of this
15 Section.

16 "Criminal history record information" means data
17 identifiable to an individual and consisting of
18 descriptions or notations of arrests, detentions,
19 indictments, informations, pre-trial proceedings, trials,
20 or other formal events in the criminal justice system or
21 descriptions or notations of criminal charges (including
22 criminal violations of local municipal ordinances) and the
23 nature of any disposition arising therefrom, including
24 sentencing, court or correctional supervision,
25 rehabilitation and release. The term does not apply to
26 statistical records and reports in which individuals are
27 not identified and from which their identities are not
28 ascertainable, or to information that is for criminal
29 investigative or intelligence purposes.

30 (e) Records that relate to or affect the security of
31 correctional institutions and detention facilities.

32 (f) Preliminary drafts, notes, recommendations,
33 memoranda and other records in which opinions are
34 expressed, or policies or actions are formulated, except

1 that a specific record or relevant portion of a record
2 shall not be exempt when the record is publicly cited and
3 identified by the head of the public body. The exemption
4 provided in this paragraph (f) extends to all those records
5 of officers and agencies of the General Assembly that
6 pertain to the preparation of legislative documents.

7 (g) Trade secrets and commercial or financial
8 information obtained from a person or business where the
9 trade secrets or information are proprietary, privileged
10 or confidential, or where disclosure of the trade secrets
11 or information may cause competitive harm, including:

12 (i) All information determined to be confidential
13 under Section 4002 of the Technology Advancement and
14 Development Act.

15 (ii) All trade secrets and commercial or financial
16 information obtained by a public body, including a
17 public pension fund, from a private equity fund or a
18 privately held company within the investment portfolio
19 of a private equity fund as a result of either
20 investing or evaluating a potential investment of
21 public funds in a private equity fund. The exemption
22 contained in this item does not apply to the aggregate
23 financial performance information of a private equity
24 fund, nor to the identity of the fund's managers or
25 general partners. The exemption contained in this item
26 does not apply to the identity of a privately held
27 company within the investment portfolio of a private
28 equity fund, unless the disclosure of the identity of a
29 privately held company may cause competitive harm.

30 Nothing contained in this paragraph (g) shall be construed
31 to prevent a person or business from consenting to disclosure.

32 (h) Proposals and bids for any contract, grant, or
33 agreement, including information which if it were
34 disclosed would frustrate procurement or give an advantage

1 to any person proposing to enter into a contractor
2 agreement with the body, until an award or final selection
3 is made. Information prepared by or for the body in
4 preparation of a bid solicitation shall be exempt until an
5 award or final selection is made.

6 (i) Valuable formulae, computer geographic systems,
7 designs, drawings and research data obtained or produced by
8 any public body when disclosure could reasonably be
9 expected to produce private gain or public loss. The
10 exemption for "computer geographic systems" provided in
11 this paragraph (i) does not extend to requests made by news
12 media as defined in Section 2 of this Act when the
13 requested information is not otherwise exempt and the only
14 purpose of the request is to access and disseminate
15 information regarding the health, safety, welfare, or
16 legal rights of the general public.

17 (j) Test questions, scoring keys and other examination
18 data used to administer an academic examination or
19 determined the qualifications of an applicant for a license
20 or employment.

21 (k) Architects' plans, engineers' technical
22 submissions, and other construction related technical
23 documents for projects not constructed or developed in
24 whole or in part with public funds and the same for
25 projects constructed or developed with public funds, but
26 only to the extent that disclosure would compromise
27 security, including but not limited to water treatment
28 facilities, airport facilities, sport stadiums, convention
29 centers, and all government owned, operated, or occupied
30 buildings.

31 (l) Library circulation and order records identifying
32 library users with specific materials.

33 (m) Minutes of meetings of public bodies closed to the
34 public as provided in the Open Meetings Act until the

1 public body makes the minutes available to the public under
2 Section 2.06 of the Open Meetings Act.

3 (n) Communications between a public body and an
4 attorney or auditor representing the public body that would
5 not be subject to discovery in litigation, and materials
6 prepared or compiled by or for a public body in
7 anticipation of a criminal, civil or administrative
8 proceeding upon the request of an attorney advising the
9 public body, and materials prepared or compiled with
10 respect to internal audits of public bodies.

11 (o) Information received by a primary or secondary
12 school, college or university under its procedures for the
13 evaluation of faculty members by their academic peers.

14 (p) Administrative or technical information associated
15 with automated data processing operations, including but
16 not limited to software, operating protocols, computer
17 program abstracts, file layouts, source listings, object
18 modules, load modules, user guides, documentation
19 pertaining to all logical and physical design of
20 computerized systems, employee manuals, and any other
21 information that, if disclosed, would jeopardize the
22 security of the system or its data or the security of
23 materials exempt under this Section.

24 (q) Documents or materials relating to collective
25 negotiating matters between public bodies and their
26 employees or representatives, except that any final
27 contract or agreement shall be subject to inspection and
28 copying.

29 (r) Drafts, notes, recommendations and memoranda
30 pertaining to the financing and marketing transactions of
31 the public body. The records of ownership, registration,
32 transfer, and exchange of municipal debt obligations, and
33 of persons to whom payment with respect to these
34 obligations is made.

1 (s) The records, documents and information relating to
2 real estate purchase negotiations until those negotiations
3 have been completed or otherwise terminated. With regard to
4 a parcel involved in a pending or actually and reasonably
5 contemplated eminent domain proceeding under Article VII
6 of the Code of Civil Procedure, records, documents and
7 information relating to that parcel shall be exempt except
8 as may be allowed under discovery rules adopted by the
9 Illinois Supreme Court. The records, documents and
10 information relating to a real estate sale shall be exempt
11 until a sale is consummated.

12 (t) Any and all proprietary information and records
13 related to the operation of an intergovernmental risk
14 management association or self-insurance pool or jointly
15 self-administered health and accident cooperative or pool.

16 (u) Information concerning a university's adjudication
17 of student or employee grievance or disciplinary cases, to
18 the extent that disclosure would reveal the identity of the
19 student or employee and information concerning any public
20 body's adjudication of student or employee grievances or
21 disciplinary cases, except for the final outcome of the
22 cases.

23 (v) Course materials or research materials used by
24 faculty members.

25 (w) Information related solely to the internal
26 personnel rules and practices of a public body.

27 (x) Information contained in or related to
28 examination, operating, or condition reports prepared by,
29 on behalf of, or for the use of a public body responsible
30 for the regulation or supervision of financial
31 institutions or insurance companies, unless disclosure is
32 otherwise required by State law.

33 (y) Information the disclosure of which is restricted
34 under Section 5-108 of the Public Utilities Act.

1 (z) Manuals or instruction to staff that relate to
2 establishment or collection of liability for any State tax
3 or that relate to investigations by a public body to
4 determine violation of any criminal law.

5 (aa) Applications, related documents, and medical
6 records received by the Experimental Organ Transplantation
7 Procedures Board and any and all documents or other records
8 prepared by the Experimental Organ Transplantation
9 Procedures Board or its staff relating to applications it
10 has received.

11 (bb) Insurance or self insurance (including any
12 intergovernmental risk management association or self
13 insurance pool) claims, loss or risk management
14 information, records, data, advice or communications.

15 (cc) Information and records held by the Department of
16 Public Health and its authorized representatives relating
17 to known or suspected cases of sexually transmissible
18 disease or any information the disclosure of which is
19 restricted under the Illinois Sexually Transmissible
20 Disease Control Act.

21 (dd) Information the disclosure of which is exempted
22 under Section 30 of the Radon Industry Licensing Act.

23 (ee) Firm performance evaluations under Section 55 of
24 the Architectural, Engineering, and Land Surveying
25 Qualifications Based Selection Act.

26 (ff) Security portions of system safety program plans,
27 investigation reports, surveys, schedules, lists, data, or
28 information compiled, collected, or prepared by or for the
29 Regional Transportation Authority under Section 2.11 of
30 the Regional Transportation Authority Act or the St. Clair
31 County Transit District under the Bi-State Transit Safety
32 Act.

33 (gg) Information the disclosure of which is restricted
34 and exempted under Section 50 of the Illinois Prepaid

1 Tuition Act.

2 (hh) Information the disclosure of which is exempted
3 under the State Officials and Employees Ethics Act.

4 (ii) Beginning July 1, 1999, information that would
5 disclose or might lead to the disclosure of secret or
6 confidential information, codes, algorithms, programs, or
7 private keys intended to be used to create electronic or
8 digital signatures under the Electronic Commerce Security
9 Act.

10 (jj) Information contained in a local emergency energy
11 plan submitted to a municipality in accordance with a local
12 emergency energy plan ordinance that is adopted under
13 Section 11-21.5-5 of the Illinois Municipal Code.

14 (kk) Information and data concerning the distribution
15 of surcharge moneys collected and remitted by wireless
16 carriers under the Wireless Emergency Telephone Safety
17 Act.

18 (ll) Vulnerability assessments, security measures, and
19 response policies or plans that are designed to identify,
20 prevent, or respond to potential attacks upon a community's
21 population or systems, facilities, or installations, the
22 destruction or contamination of which would constitute a
23 clear and present danger to the health or safety of the
24 community, but only to the extent that disclosure could
25 reasonably be expected to jeopardize the effectiveness of
26 the measures or the safety of the personnel who implement
27 them or the public. Information exempt under this item may
28 include such things as details pertaining to the
29 mobilization or deployment of personnel or equipment, to
30 the operation of communication systems or protocols, or to
31 tactical operations.

32 (mm) Maps and other records regarding the location or
33 security of a utility's generation, transmission,
34 distribution, storage, gathering, treatment, or switching

1 facilities.

2 (nn) Law enforcement officer identification
3 information or driver identification information compiled
4 by a law enforcement agency or the Department of
5 Transportation under Section 11-212 of the Illinois
6 Vehicle Code.

7 (oo) Records and information provided to a residential
8 health care facility resident sexual assault and death
9 review team or the Residential Health Care Facility
10 Resident Sexual Assault and Death Review Teams Executive
11 Council under the Residential Health Care Facility
12 Resident Sexual Assault and Death Review Team Act.

13 (pp) Information provided to the predatory lending
14 database created pursuant to Article 3 of the Residential
15 Real Property Disclosure Act, except to the extent
16 authorized under that Article.

17 (qq) ~~(pp)~~ Defense budgets and petitions for
18 certification of compensation and expenses for court
19 appointed trial counsel as provided under Sections 10 and
20 15 of the Capital Crimes Litigation Act. This subsection
21 (qq) ~~(pp)~~ shall apply until the conclusion of the trial and
22 appeal of the case, even if the prosecution chooses not to
23 pursue the death penalty prior to trial or sentencing.

24 (rr) Information the disclosure of which is exempted
25 under the Viatical and Life Settlements Act of 2006.

26 (2) This Section does not authorize withholding of
27 information or limit the availability of records to the public,
28 except as stated in this Section or otherwise provided in this
29 Act.

30 (Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237,
31 eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03;
32 93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff.
33 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; revised
34 8-29-05.)

1 Section 910. The Illinois Insurance Code is amended by
2 changing Section 424 as follows:

3 (215 ILCS 5/424) (from Ch. 73, par. 1031)

4 Sec. 424. Unfair methods of competition and unfair or
5 deceptive acts or practices defined. The following are hereby
6 defined as unfair methods of competition and unfair and
7 deceptive acts or practices in the business of insurance:

8 (1) The commission by any person of any one or more of the
9 acts defined or prohibited by Sections 134, 143.24c, 147, 148,
10 149, 151, 155.22, 155.22a, 236, 237, 364, and 469 of this Code.

11 (2) Entering into any agreement to commit, or by any
12 concerted action committing, any act of boycott, coercion or
13 intimidation resulting in or tending to result in unreasonable
14 restraint of, or monopoly in, the business of insurance.

15 (3) Making or permitting, in the case of insurance of the
16 types enumerated in Classes 1, 2, and 3 of Section 4, any
17 unfair discrimination between individuals or risks of the same
18 class or of essentially the same hazard and expense element
19 because of the race, color, religion, or national origin of
20 such insurance risks or applicants. The application of this
21 Article to the types of insurance enumerated in Class 1 of
22 Section 4 shall in no way limit, reduce, or impair the
23 protections and remedies already provided for by Sections 236
24 and 364 of this Code or any other provision of this Code.

25 (4) Engaging in any of the acts or practices defined in or
26 prohibited by Sections 154.5 through 154.8 of this Code.

27 (5) Making or charging any rate for insurance against
28 losses arising from the use or ownership of a motor vehicle
29 which requires a higher premium of any person by reason of his
30 physical handicap, race, color, religion, or national origin.

31 (6) Engaging in any of the acts or practices prohibited by
32 the Viatical and Life Settlements Act of 2006.

1 (Source: P.A. 92-399, eff. 8-16-01; 92-651, eff. 7-11-02;
2 92-669, eff. 1-1-03.)

3 Section 915. The Illinois Securities Law of 1953 is amended
4 by changing Section 2.1 and by adding Section 2.33 as follows:

5 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

6 Sec. 2.1. Security. "Security" means any note, stock,
7 treasury stock, bond, debenture, evidence of indebtedness,
8 certificate of interest or participation in any profit-sharing
9 agreement, collateral-trust certificate, preorganization
10 certificate or subscription, transferable share, investment
11 contract, viatical investment, investment fund share,
12 face-amount certificate, voting-trust certificate, certificate
13 of deposit for a security, fractional undivided interest in
14 oil, gas or other mineral lease, right or royalty, any put,
15 call, straddle, option, or privilege on any security,
16 certificate of deposit, or group or index of securities
17 (including any interest therein or based on the value thereof),
18 or any put, call, straddle, option, or privilege entered into,
19 relating to foreign currency, or, in general, any interest or
20 instrument commonly known as a "security", or any certificate
21 of interest or participation in, temporary or interim
22 certificate for, receipt for, guarantee of, or warrant or right
23 to subscribe to or purchase, any of the foregoing. "Security"
24 does not mean a mineral investment contract or a mineral
25 deferred delivery contract; provided, however, the Department
26 shall have the authority to regulate these contracts as
27 hereinafter provided.

28 (Source: P.A. 92-308, eff. 1-1-02; 93-927, eff. 8-12-04.)

29 (815 ILCS 5/2.33 new)

30 Sec. 2.33. Viatical investment. "Viatical investment"
31 means the contractual right to receive any portion of the death

1 benefit or ownership of a life insurance policy or certificate
2 for consideration that is less than the expected death benefit
3 of the life insurance policy or certificate. "Viatical
4 investment" does not include:

5 (1) any transaction between a viator and a viatical
6 settlement provider, as defined in the Viatical and Life
7 Settlements Act of 2006;

8 (2) any transfer of ownership or beneficial interest in
9 a life insurance policy from a viatical settlement provider
10 to another viatical settlement provider, as defined in the
11 Viatical and Life Settlements Act of 2006, or to any legal
12 entity formed solely for the purpose of holding ownership
13 or beneficial interest in a life insurance policy or
14 policies;

15 (3) the bona fide assignment of a life insurance policy
16 to a bank, savings bank, savings and loan association,
17 credit union, or other licensed lending institution as
18 collateral for a loan; or

19 (4) a policy loan by a life insurance company or the
20 exercise of accelerated benefits pursuant to the terms of a
21 life insurance policy issued in accordance with the
22 Illinois Insurance Code.

23 Section 997. Severability. The provisions of this Act are
24 severable under Section 1.31 of the Statute on Statutes.

25 Section 999. Effective date. This Act takes effect upon
26 becoming law."